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UNITED STATES OF AMERICA,
Plaintiff,
versus
SHAWN MATTHEW RUSSELL,
Defendant.

**Magistrate Judge Robert M. Holter,
Presiding**

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Court Reporter
For The Record Reporting Services
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PROCEEDINGS

(The proceedings began at 9:45 a.m.)

THE BAILIFF: All rise. United States District Court in and for the District of Montana is now in session, the Honorable Robert M. Holter, presiding.

THE COURT: Be seated, please. Good morning.

MR. WHITAKER: Morning, Your Honor.

MR. DONAHOE: Morning, Your Honor.

CLERK OF COURT: Today we are hearing the Helena case number. This is time set down for the preliminary hearing and detention hearing in Criminal Cause MJ-10-6-H-RMH, USA versus Shawn Matthew Russell.

THE COURT: Let's see. You're Shawn Matthew Russell; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Counsel, do you represent him?

MR. DONAHOE: I do, Your Honor.

THE COURT: Yeah. The Government ready to proceed with the preliminary hearing?

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1 MR. WHITAKER: Government is ready, Your
2 Honor.

3 THE COURT: The Defendant?

4 MR. DONAHOE: We are.

5 THE COURT: Be seated, please.

6 MR. WHITAKER: The Government would call
7 Brian Fischer.

8

9 BRIAN FISHER,

10 having been first duly sworn, testified under oath
11 as follows:

12 THE WITNESS: I do.

13 CLERK OF COURT: Please state your full
14 name and spell your last name.

15 THE WITNESS: Brian David Fischer,
16 F-I-S-C-H-E-R.

17 CLERK OF COURT: Go ahead and take a seat
18 in the witness stand and speak clearly into the
19 microphone.

20

21 DIRECT EXAMINATION

22 BY MR. WHITAKER:

23 Q. Good morning, Mr. Fischer.

24 A. Good morning.

25 Q. Can you please tell the Court how you are

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1 **presently employed?**

2 A. Certainly. I'm a Detective with the Helena
3 Police Department assigned to the Montana Internet
4 Crimes Against Children Task Force.

5 **Q. And just could you briefly describe some of**
6 **the duties of your employment?**

7 A. Certainly. I investigate complaints and
8 crimes involving the sexual exploitation of children via
9 any technology-based means, which can include
10 peer-to-peer investigations for child pornography, as
11 well as any type of enticement or sexual exploitation of
12 a child under the age of 18 via chat rooms, things of
13 that nature.

14 **Q. And how long have you been employed in your**
15 **present duties?**

16 A. For three years, but I've been a law
17 enforcement officer for over 20.

18 **Q. And have you had cases in the past to**
19 **investigate child exploitation cases as you've**
20 **described?**

21 A. Yes, I have.

22 **Q. And have you had training in how to**
23 **investigate those types of crimes?**

24 A. Yes, I have.

25 **Q. And briefly describe what kind of training**

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1 **you've had.**

2 A. Certainly. Through the National Internet
3 Crimes Against Children Task Force they have -- which is
4 through Fox Valley Technical College, I've had basic
5 undercover chat investigations. I've been involved in
6 peer-to-peer investigations. I've had numerous child
7 abuse, child sexual abuse investigation classes. I have
8 been taught in the latest techniques and tools via
9 Internet investigations pertaining to, for example,
10 Facebook, My Space, other chat rooms that are on the
11 Internet and continue to receive that training.

12 **Q. As part of your duties as an investigator, did**
13 **you participate in the investigation of an individual**
14 **that is the subject of this case, Mr. Shawn Matthew**
15 **Russell?**

16 A. Yes.

17 **Q. Could you describe for the Court how you first**
18 **became aware of this investigation.**

19 A. Certainly. In June of 2010 I received a phone
20 call from Detective Jim Littlefield with the Pendleton
21 Oregon Police Department who indicated that he needed
22 assistance in regards to an investigation in which there
23 was a report of a 15-year-old girl that may have been
24 taken from Pendleton, Oregon in December of 2009 by
25 Mr. Russell and they engaged in sex while traveling from

1 Oregon to Washington to Montana. And that the -- Mr.
2 Russell had met the 15-year-old girl in roughly
3 September of 2009 via the Internet, and they
4 communicated via the Internet, as well as webcam and by
5 cellphone.

6 Q. And are you aware of the nature of those
7 initial communications, as you've just described, that
8 Mr. Russell had with the underage female?

9 A. According to a statement that was taken from
10 the female, I was aware of the conversations that took
11 place.

12 Q. Are you aware of any time during those
13 conversations whether Mr. Russell was aware of the
14 victim's age?

15 A. I believe on a couple of occasions there was
16 -- the victim in this particular case indicated she was
17 15 to Mr. Russell. The mother apparently had talked to
18 Mr. Russell via webcam to say that her daughter was too
19 young for Mr. Russell to be involved with, as well as
20 there was some recovered chat messages in which
21 Mr. Russell acknowledged that he knew that she was 15
22 and wished that he would have waited until she was 16 to
23 engage in a relationship with the victim.

24 Q. Now, you mentioned that he traveled to Oregon.
25 Do you -- are you aware of what happened when he arrived

1 **at Oregon?**

2 A. I am. I am aware that he had waited for the
3 victim to leave her mother's home, got into the vehicle
4 with Mr. Russell. They traveled to a motel in
5 Pendleton, Oregon where the victim claims that the two
6 engaged in sexual intercourse. The following day, the
7 two then mutually agreed to leave Oregon and be
8 together, and they went to the Walla
9 Walla/Pascoe/Kennewick, Washington area where they also
10 spent another evening in a motel where they engaged in
11 sexual intercourse, and then traveled to Montana staying
12 in Missoula one night, and the two had engaged in sexual
13 intercourse in a motel there, and then traveled to
14 Helena where they spent two nights at the Shilo Inn and
15 engaged in sexual intercourse.

16 **Q. During your investigation were you able to**
17 **confirm independently any of the information that was**
18 **provided to you by the victim?**

19 A. Yes. There was a police officer in Pendleton,
20 Oregon that had gone to the Red Lion Hotel and found and
21 verified that Mr. Russell had used a Visa card and was
22 able to receive the last four digits of that Visa card
23 to show for payment that he had stayed there. I had
24 personally gone to the Shilo Inn and received a
25 registration card, as well as the payment folio that

1 showed Mr. Russell had spent two nights in Helena.

2 Q. And are you familiar with the affidavit that
3 you submitted in this case?

4 A. Yes, I am.

5 Q. And I would ask you if you would read -- if it
6 would be your position that you would readopt the same
7 facts as alleged in that affidavit for the purposes of
8 this proceeding? Is -- everything that you had
9 submitted to the Court in that affidavit, is that still
10 true and accurate and correct?

11 A. Yes, it is.

12 Q. And as part of that affidavit you had
13 indicated that it's a crime in Montana to have sexual
14 intercourse without consent as a violation of Montana
15 Code 45-5-503?

16 A. That is correct.

17 Q. And briefly, what is that underlying offense
18 that you referred to in your criminal complaint and
19 affidavit?

20 A. In the state of Montana it's illegal for -- or
21 a child under the age of 16 is unable to engage or give
22 consent to engage in sexual intercourse.

23 Q. So is it your understanding that it would be a
24 crime in Montana for an adult male to engage in sexual
25 intercourse with a minor under the age of 16?

1 A. That is correct.

2 Q. During your investigation, did you learn about
3 any chats that the -- or communications, chats that the
4 Defendant may have had with the victim or the victim's
5 family or friends after the incidents that you have
6 described that occurred in December?

7 A. Yes.

8 Q. Have you been able to review -- what kind of
9 communications were those?

10 A. They looked like they could be chat postings
11 or there was chat communication back and forth. It
12 looks like it may be some other type of communication,
13 but they were apparently delivered from the victim in
14 this case to the police department and forwarded on to
15 me to say that those were the communications between
16 Mr. Russell and the victim.

17 Q. And have you had an opportunity to review
18 those communications?

19 A. Yes, I have.

20 Q. Now, you've indicated that you thought these
21 communications were between the Defendant and the
22 victim, was that -- was it the victim's, I guess, screen
23 name that was being used?

24 A. Yes, it was.

25 Q. Are you aware of maybe possibly whether there

1 was another individual using the victim's screen name at
2 that point?

3 A. There was at one particular point. The
4 victim's former boyfriend had also been using that
5 particular screen name.

6 Q. I want to refer you, if I could, to -- well,
7 let me ask you. Was there a chat that occurred on March
8 9th of 2010?

9 A. Yes, there was.

10 Q. Did you bring that chat with you to court
11 today?

12 A. I did, yes.

13 Q. And do you have that in front of you?

14 A. I do.

15 Q. I want to refer your attention to that chat,
16 if I might, and refer you to the bottom of Page 7 of
17 that chat.

18 A. Certainly.

19 Q. Could you just generally describe for the
20 Court what is occurring, starting at the bottom of that
21 page and continuing over on to Page 8?

22 A. Certainly. What had taken place is is that
23 the communication was between the victim's screen name,
24 in which the victim's new boyfriend had been
25 communicating with Mr. Russell's screen name, and in the

1 process they talked about the relationship. They talked
2 about the legality of it, that it wasn't a legal act
3 that Mr. Russell had engaged in. And in the process,
4 Mr. Russell had made some comments about how he wanted
5 to, instead of being taken into custody for his illegal
6 activity, that getting gunned down by the cops would be
7 preferable.

8 **Q. Why did he say that being gunned down by the**
9 **cops would be preferable?**

10 A. He apparently had some type of a medical
11 condition that, if the medical condition were to act up,
12 he did not want to go in that fashion. He also talked
13 about that he did not want to take his own life, that
14 that would be no fun and that it would be a lot more fun
15 if law enforcement would take him out.

16 **Q. During your investigation did you review any**
17 **web pages that belonged to Mr. Russell?**

18 A. I did.

19 **Q. What web pages did you review?**

20 A. Mr. Russell had a My Space profile, and on the
21 My Space profile you can post information about how
22 you're feeling or what your thought process may be or
23 just post information. And in that particular case, he
24 talked about how, if you wanted somebody shot, that he
25 would be the person to be able to do that and he charged

1 less than his other competitors. He also mentioned that
2 he was trigger happy under a -- basically it's called a
3 smilicon is what it's called, it kind of gives the
4 thought process or how you're feeling at that particular
5 point, and it stated that he was trigger happy.

6 Q. And when was that posting made?

7 A. If I remember correctly, it was the 16th of
8 August that that particular posting was made.

9 Q. Now, you said you weren't quite exactly sure,
10 would it possibly have been on August 9th of 2010?

11 A. It could have been on August 9th. When I
12 looked, it looked like the last login date was the
13 16th.

14 Q. And how did you know that page belonged to Mr.
15 Russell?

16 A. The picture on the page represented him, as
17 well as what he -- basically, the picture represented
18 him.

19 Q. Now, after you had obtained and filed this
20 criminal complaint and affidavit with the Court, what
21 actions did you take to take Mr. Russell into custody on
22 the arrest warrant?

23 A. Well, as is customary, there are several
24 things that you want to do to make sure that you
25 positively identify the individual. First of all,

1 the -- Mr. Russell was identified by the victim and the
2 victim's mother as to the individual that the victim
3 traveled from Montana -- or from Oregon to Montana with.
4 They were able to obtain a driver's license.

5 I tried to obtain a criminal background check
6 and found Mr. Russell's name and date of birth, but I
7 did not find the Social Security number, which led me to
8 believe that it may not be the same subject. So in that
9 particular case, I also got the help of the United
10 States Postal Inspector here to confirm Mr. Russell's
11 address, which was **(address redacted per request)**. And
12 taking into account the comments about wanting to be
13 gunned down by cops, we ended up using a ruse and trying
14 to separate Mr. Russell from his home to take him into
15 custody. We didn't want him to have any access possibly
16 to any weapons, didn't know if he had any weapons. He
17 didn't have any work history that we were able to find,
18 and so we wanted to make sure that safety was the number
19 one priority, after making those particular comments.

20 Q. When you took him into custody, were you --
21 did you become aware whether there was any firearms
22 located in the residence where he was residing?

23 A. Yes. His stepfather had a 9 millimeter that
24 was in a closet.

25 Q. Have you taken any other steps during your

1 investigation to investigate any other illegal activity
2 that may have been engaged in by Mr. Russell that is not
3 indicated in the affidavit?

4 A. Certainly. As of yesterday, I received
5 notification from Jimmy Weg, who is the forensic analyst
6 for the State of Montana, that there are possibly
7 pictures of the victim that would constitute child
8 pornography on Mr. Russell's computer.

9 Q. When you say "possibly," did you take any
10 steps to confirm whether those images did -- in fact
11 were images of the victim that we have been talking
12 about in this case?

13 A. Yes. We compared a -- basically a sterile
14 photograph that we received from the detective over in
15 Oregon, compared those to the picture of the female, the
16 underaged female that is on Mr. Russell's computer. And
17 the background, as well as the facial features, match.
18 And then a phone call was also placed to the victim who
19 confirms that there will probably be pictures of herself
20 on Mr. Russell's computer.

21 Q. And were those images created by Mr. Russell,
22 or were they created by someone else, or do you know?

23 A. It appears that it was a webcam share, so the
24 victim would have been on webcam with Mr. Russell.
25 Mr. Russell was also webcamming with the victim.

1 Q. And then those images, if I'm understanding
2 you correctly, were saved by Mr. Russell?

3 A. That's correct.

4 Q. Are you aware of whether this -- whether
5 Mr. Russell is originally from Helena, Montana?

6 A. Uhm, yes. I'm aware that he apparently grew
7 up in New York state and had traveled to Arizona prior
8 to moving to Helena about four and a half years ago.

9 Q. Did you have an opportunity to interview the
10 Defendant's mother in this case?

11 A. Yes. I did talk to her the day that the
12 search warrant was served.

13 Q. And what, if anything, did you learn from the
14 Defendant's mother about what had happened when -- let
15 me back up. When the Defendant arrived here in Montana
16 with the victim, and as you described at the Shilo Inn,
17 what happened after that?

18 A. The Defendant and the victim traveled to Mr.
19 Russell's home, and Mr. Russell's mother did meet the
20 victim. And when the mother found out that -- according
21 to her -- she was 17, the -- Mr. Russell's mother
22 basically said we need to get the child back to the
23 parents in Oregon and basically took Mr. Russell and the
24 victim to the airport to where Mr. Russell paid for a
25 plane ticket via Horizon Airlines to get the female back

1 to Oregon.

2 Q. Is there anything other -- any other
3 significant facts that you would like to add about your
4 investigation in this matter?

5 A. Uhm, no, not to this particular point.

6 MR. WHITAKER: I have no further
7 questions, Your Honor.

8 THE COURT: Mr. Donahoe,
9 cross-examination.

10 MR. DONAHOE: Thank you, Your Honor.

11
12 CROSS-EXAMINATION

13 BY MR. DONAHOE:

14 Q. Sir, is there any concern about kidnapping
15 here?

16 A. Uhm, no, I don't believe that there is.

17 Q. Okay. So, if we could separate. The coercion
18 and enticement complaint goes to the sex, doesn't it?

19 A. That is correct.

20 Q. All right. So we could distinguish, then, for
21 our purposes, a difference between coercion or
22 compelling somebody to go with interstate and you are
23 not seeing any evidence of that here?

24 A. Not that I'm aware of, no.

25 Q. And isn't it true, sir, that the victim -- or

1 maybe we could refer to her as AS, would that be okay?

2 A. That's correct, yes.

3 Q. All right. So, AS was feuding with her mom
4 around the time of departure from the West Coast; isn't
5 that true?

6 A. That is correct.

7 Q. Yeah. And she met up with Mr. Russell and
8 they apparently made this plan to come to Helena?

9 A. That's correct.

10 Q. Is that right? And then, if I get this right,
11 as soon as mom found out, that would be Mr. Russell's
12 mom, immediate steps were taken to return the child, the
13 youngster to her mother.

14 A. That's correct.

15 Q. All right. And then there was some follow-up
16 investigation there, correct?

17 A. That is correct.

18 Q. Now, is there a time difference, sir, between
19 those events and the return of AS to the West Coast and
20 your actually arresting Mr. Russell?

21 A. There is.

22 Q. All right. Could you explain that? And, I
23 mean, I'm sure you have that timeline in your head.

24 A. Certainly, yes.

25 Q. Yeah.

1 A. From what happened is, is that the complaint
2 came in initially as a runaway. When she was returned,
3 the runaway was dropped. In March of this year is when
4 AS and her mother went to the police to talk about what
5 had happened, that the sexual relationship took place,
6 and then that was turned over to detectives, and it
7 wasn't until June when they contacted me for
8 assistance.

9 Q. All right. Now, between those two beginning
10 and ending points, any investigation by you that shows
11 that this individual, Mr. Russell, engaged in any
12 criminal activity?

13 A. As far as? Excuse me. Can you repeat the
14 question again, please?

15 Q. Any investigation by you revealed between
16 those two dates, those perimeter dates that you just
17 laid out there, I think December and March, --

18 A. Correct.

19 Q. -- that Mr. Russell engaged in criminal
20 activity?

21 A. No. The only one that I did was just to check
22 with the Shilo Inn here in Helena. That was pretty much
23 it.

24 Q. All right. So nothing of late, or at least
25 the down time, if we could call it that, between

1 December of '09 and the investigation heating up again
2 in March of '10, nothing to suggest that he was
3 consistently engaged in criminal behavior?

4 A. That's correct. I did look for profiles that
5 were out on the Internet. He has those marked private.
6 I wasn't able to see if there was anything, but I -- you
7 know, there was nothing that I noticed.

8 Q. All right. Now, if we could talk about the
9 website and the Facebook business. Any on-the-ground
10 investigation by you that sort of supports the inference
11 that that was anything other than exaggeration?

12 A. Other than there was no work history or we had
13 no information as a police department. There was no
14 criminal history. There was nothing else that we were
15 able to find.

16 Q. Okay. So, nothing in the way of actual
17 possession of firearms.

18 A. No. There was no history that he had any
19 concealed weapons permit, that he had purchased any
20 firearms, anything of that nature.

21 Q. All right. So it would appear that, at least
22 in terms of hard evidence -- let's put it this way.
23 Would your concern be heightened had you conducted the
24 search at the home and found a plethora or a volume of
25 weapons in the closet?

1 A. Uhm, much more so, yes.

2 Q. And if they were of an automatic nature, that
3 would really heighten your concern, wouldn't it?

4 A. Correct.

5 Q. All right. So, if we work on that same scale,
6 the absence of that evidence is some suggestion that
7 this might be hyperbole here on the Internet?

8 A. It could be, yes.

9 Q. Okay. Do you know why mom and AS were
10 feuding?

11 A. I do not recall exactly what had taken place,
12 but I know that there was a feud.

13 Q. All right. In your interview with mom, Mr.
14 Russell's mom, and I think her name is Barbara Todd, --

15 A. That's correct.

16 Q. -- did you determine whether or not Mr.
17 Russell has employment?

18 A. Yes, I did.

19 Q. All right. Could you tell Judge Holter about
20 that, please?

21 A. Certainly. Mr. Russell is working for his
22 mother over at Walmart and has been, I believe, for the
23 last four years, four and a half years.

24 Q. All right. So you did eventually nail down
25 that there was some consistency in employment for this

1 individual?

2 A. That's correct.

3 Q. All right. Anything in the way of NCIC
4 reports, hits on -- from the Phoenix area suggesting
5 that there's any kind of felony conviction here?

6 A. No.

7 Q. Anything in the way of a misdemeanor
8 conviction here?

9 A. No.

10 Q. So, the long and the short of it is is that
11 these two individuals, Mr. Russell and AS, hooked up on
12 the Internet, he rolled out there, commenced a
13 relationship with her and brought her here?

14 A. That's correct.

15 Q. And she apparently traveled interstate
16 voluntarily.

17 A. That's correct.

18 Q. And, in fact, she was kind of pressured to go
19 home by Mr. Russell's mother?

20 A. That's correct.

21 Q. Anything since AS's return to Washington on
22 the airplane, for lack of a better phrase, of a sordid
23 nature between these two, Mr. Russell and AS?

24 A. Yes. There was stuff in February, uhm, and
25 those were the conversations that were commented about

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1 where he wanted to preferably get gunned down by cops.
2 He was frustrated because the relationship had broken up
3 and basically talked about those types of things. Those
4 were in February.

5 Q. Okay. But, I mean, any follow-up in terms of
6 him coming out there again, we should be together, that
7 sort of thing?

8 A. He had made a comment in one of the chats
9 where he said that he had been out there many times,
10 even when they were having difficulties, said he knew
11 where she lived. That was really about all the
12 conversation that was there.

13 Q. All right. So, apparently there was some
14 interest in maintaining the relationship on his end?

15 A. Yes.

16 Q. Did you ever determine whether that was true
17 for AS, as well?

18 A. Uhm, yes. And she did not want to -- in fact,
19 there was a conversation where Mr. Russell wanted some
20 things back that he had provided to her during the
21 course of the relationship.

22 Q. All right. Anything untypical about that in
23 this breakup other -- setting to one side the age
24 difference?

25 A. Right. No.

1 Q. No.

2 A. No.

3 MR. DONAHOE: I don't have anything
4 further. Thanks.

5 THE COURT: Redirect, Counsel.

6 MR. WHITAKER: Briefly, Your Honor.

7

8 REDIRECT EXAMINATION

9 BY MR. WHITAKER:

10 Q. Mr. Donahoe had asked you about firearms in
11 the house and about automatic weapons and whatnot, do
12 you recall that?

13 A. I do.

14 Q. Now, you had -- just so I'm clear, you had
15 talked -- you had talked about, in your direct
16 testimony, that there was a firearm that was found in
17 the house; is that right?

18 A. That is correct.

19 Q. Okay. And was that a loaded firearm or was
20 there ammunition nearby?

21 A. There was a box of ammunition, but I believe
22 the firearm was unloaded.

23 Q. Okay. Now, I just wanted to clarify your
24 testimony. Mr. Donahoe had asked you about the coercion
25 -- whether there was any coercion or inducement or

1 persuasion into getting the victim, AS, to travel. Is
2 it your testimony that there was or was not persuasion,
3 inducement or coercion used by Mr. Russell to get AS to
4 travel in interstate commerce to engage in sexual
5 intercourse?

6 A. They basically talked about it, felt it was
7 good -- they talked about being able to go back to
8 Montana, and that's when the two decided to go.

9 Q. And Mr. Russell talked to her using this
10 Internet communication?

11 A. That's correct, webcam, text message,
12 cellphone.

13 Q. Okay. And Mr. Donahoe also asked you about
14 the My Space postings, the Internet posting that you
15 talked about, about it basically being a hit man, or
16 however you described that, that he was better than his
17 competition?

18 A. That's correct. If you wanted somebody dead
19 he was your man, and he was cheaper than most of his
20 competitors.

21 Q. And you had indicated that possibly could just
22 be hyperbole, but you don't know for sure, do you, what
23 his thoughts and mind were when he posted that?

24 A. No.

25 Q. But how did you respond -- how did Helena

1 Police Department respond to that posting? What did you
2 do when you did the arrest?

3 A. At that particular point we knew that we
4 weren't just going to go and knock on the door fearing
5 that this could possibly turn out to be something very
6 dangerous. Not knowing Mr. Russell, and not having had
7 any contact with him, and it's been my experience in the
8 past that sometimes in cases such as this, individuals,
9 when they are confronted with these types of crimes, can
10 react in an unpredictable way.

11 Q. And was your fear that he may act
12 unpredictably also enhanced by the chat that we
13 discussed where he had talked about not only committing
14 suicide but being gunned down by police officers?

15 A. That's correct.

16 Q. And so you, in fact, took that seriously, did
17 you not?

18 A. We did. We felt that the ruse was the best
19 way to be able to separate him from the home.

20 MR. WHITAKER: I have no further
21 questions.

22 THE COURT: Thank you. Step down,
23 please. Do you have further witnesses?

24 MR. WHITAKER: No further witnesses.

25 MR. DONAHOE: The Defendant wish to

1 present anything at this point?

2 MR. DONAHOE: I did, Your Honor. I'd
3 like to call Barbara Todd.

4 CLERK OF COURT: Right here, please.

5

6 BARBARA ANN TODD,

7 having been first duly sworn, testified under
8 oath as follows:

9 THE WITNESS: Yes.

10 CLERK OF COURT: Please state your full
11 name and spell your last name.

12 CLERK OF COURT: Barbara Ann Todd,
13 T-O-D-D.

14 THE WITNESS: Go ahead and take a seat in
15 the witness stand and speak clearly into the
16 microphone.

17

18 DIRECT EXAMINATION

19 BY MR. DONAHOE:

20 Q. Ma'am, could you tell us your name and your
21 occupation?

22 A. Barbara Ann Todd. I'm a merchandiser for
23 Hallmark.

24 Q. All right. Could you tell Judge Holter what
25 that actually is? Are you a person that works for

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1 Walmart or a person that works for Hallmark?

2 A. I work for Hallmark in Walmart.

3 Q. Okay.

4 A. We take care of the Hallmark department,
5 putting out cards, doing returns, setting things up for
6 seasons.

7 Q. Are you related to Shawn Russell?

8 A. I am his mother.

9 Q. And prior to coming to Montana, where did you
10 and Shawn live?

11 A. Phoenix, Arizona.

12 Q. And how long did you live there?

13 A. Since Shawn was born.

14 Q. All right. So he was born there?

15 A. Yes, he was.

16 Q. Now, can you give me some chronology here?
17 When did you come to Montana?

18 A. We moved to Montana five years ago.

19 Q. And did Shawn come with?

20 A. Yes, he did.

21 Q. And you had gone through a divorce and
22 apparently remarried?

23 A. Yes, I did.

24 Q. And came this way subsequent to that?

25 A. Correct.

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1 Q. Was Shawn in continuous residence with you in
2 Phoenix?

3 A. Yes, he was.

4 Q. All right. So he lived with mom and dad up
5 until the time that you guys came here?

6 A. Yes, he did.

7 Q. So when he was 19. He's going to be about 24
8 in November?

9 A. In November, yes.

10 Q. Yeah. Shawn came up and he's been in
11 continuous residence with you and your new husband
12 here?

13 A. Correct.

14 Q. And does Shawn have an occupation?

15 A. Yes.

16 Q. Is it connected to yours?

17 A. Yes, it is.

18 Q. Could you tell me about that?

19 A. He is also a merchandiser. I am his direct
20 supervisor, and he works with me for Hallmark at
21 Walmart.

22 Q. Now, setting aside the fact that he's your
23 son, is he a person that the business needs?

24 A. Yes, definitely.

25 Q. Does he perform a valuable function?

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1 A. Yes, he does.

2 Q. All right. And has he been consistently on
3 the payroll?

4 A. Yes.

5 Q. Now, are you prepared to convince the Court of
6 that today?

7 A. I have all of his paystubs to show that since
8 even the end of last year that he has been at work at
9 all of his scheduled hours.

10 Q. All right. So, if called upon to do so, you
11 could show that he's been in consistent employment with
12 the Hallmark organization?

13 A. Yes.

14 Q. With you as his direct supervisor?

15 A. Yes.

16 Q. Can you tell me what the duties are?

17 A. He does the same as I do. He works with the
18 customers, he puts up merchandise, he does returns,
19 receives shipments.

20 Q. Has he been replaced on the job since he's
21 been incarcerated?

22 A. No, he has not.

23 Q. So you're holding his job for him?

24 A. Yes, I am.

25 Q. All right. Hoping that he will be able to be

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1 released today?

2 A. Yes.

3 Q. All right. Now, if I could take you to when
4 Shawn showed up here in Montana with AS.

5 A. Uh-huh.

6 Q. What were your concerns?

7 A. They walked in the door and she was scared and
8 shaking and I said, What's going on?

9 Q. And had you met this individual prior to that
10 encounter?

11 A. No, I had not.

12 Q. You had never met AS before?

13 A. No.

14 Q. All right. What did you do as a mom in that
15 situation?

16 A. I asked them what was wrong.

17 Q. All right. And were they forthcoming?

18 A. Yes. Yes.

19 Q. All right. Tell me about that.

20 A. Uhm, Shawn said there is a problem, and he
21 said -- he introduced me to the young lady. And I said,
22 Well, what is the problem? And she just looked at me
23 and said, I'm only 17, and I'm here from Oregon. My
24 mother threw me out of the house, my father beats me, I
25 talked to Shawn about could he get me out of this

1 situation.

2 Q. And how did you react to that?

3 A. I was shocked and said, If you're 17, in my
4 eyes you're under age, we need to get you home.

5 Q. All right. So, notwithstanding what seemed
6 to be personal domestic difficulties on AS's part, your
7 aim was to get this individual back to Washington?

8 A. Correct. I even gave her my cellphone to call
9 her mother to tell her that she was okay, and she did
10 not want to call her mother.

11 Q. All right. But you forced that issue?

12 A. Yes.

13 Q. All right. So what's the outcome there, what
14 happens?

15 A. We got into the car. And I didn't even call
16 the airlines, I wanted her out of my home. Got her into
17 the car, we went to the airport where we found out when
18 the next flight was leaving for her to go back to
19 Oregon.

20 Q. All right. And did you make sure she got
21 passage on the next flight?

22 A. I stood right there with them both the whole
23 time.

24 Q. All right.

25 A. Until she got on the plane.

1 Q. So, AS departed and you haven't seen her
2 since?

3 A. Correct.

4 Q. All right. Did Shawn go back to work?

5 A. Yes, he did.

6 Q. And did you discuss the matter further with
7 him?

8 A. We -- yes, we did. We talked about it.

9 Q. All right. Any resolution there? Or, I mean,
10 were you concerned as his mother?

11 A. As far as what could --

12 Q. Well, that -- I guess given the whole
13 situation.

14 A. Yes, I was. I didn't know what was going to
15 come of this. I was concerned for the girl's safety.
16 After what she had told me what her relationship was
17 with her mother and her father I didn't know what was
18 going to happen to her. I was concerned that neither
19 parent was going to meet her at the airport, that they
20 were sending a sister.

21 Q. Okay. So, all around, I guess on everyone's
22 part, you had concerns about how judgments were
23 exercised?

24 A. Correct.

25 Q. To include your son's?

1 A. Yes.

2 Q. All right. Did things, for lack of a better
3 phrase, calm down after that?

4 A. In our home?

5 Q. Yes, ma'am.

6 A. Yes.

7 Q. All right. And you got back to routines?

8 A. Yes.

9 Q. Shawn went back to work?

10 A. Yes.

11 Q. He consistently showed up?

12 A. Correct.

13 Q. All right. Any other problems you've had with
14 this boy in raising him?

15 A. No.

16 Q. I mean, in a big way? All families have
17 issues, but...

18 A. No.

19 Q. Anything like this ever happened to you
20 before?

21 A. No.

22 Q. No. Do you feel, under the circumstances, you
23 took appropriate action?

24 A. I believe I did.

25 Q. You satisfied with that?

1 A. Yes, I am.

2 Q. You remonstrated with your son, you took him
3 to task and told him --

4 A. Oh, definitely.

5 Q. All right. Now, do you need him back at
6 work?

7 A. I most certainly do.

8 Q. There's a thing in release law called
9 third-party custodian where you could take
10 responsibility for Shawn. Are you willing to do that?

11 A. Yes, I am.

12 Q. Monitor his movements?

13 A. Yes.

14 Q. Report them to the Court if he violates
15 certain conditions?

16 A. Yes.

17 Q. All right. Would it be your request that you
18 serve as that third-party custodian here?

19 A. Yes.

20 Q. Are you confident that Shawn can abide by all
21 the conditions?

22 A. Oh, yes.

23 Q. All right. What about the firearms issue in
24 your home? Any unwillingness on your part to get that
25 firearm out of the house, if necessary?

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1 A. No, not at all.

2 Q. All right. You could do that?

3 A. That's fine.

4 Q. All right. Is -- on that subject of firearms,
5 is Shawn a firearms person?

6 A. No.

7 Q. No. He's not really a gun aficionado, is
8 he?

9 A. No. As a matter of fact, when my husband's
10 parents come to visit us, his family is and he has taken
11 -- they have taken Shawn with them to the sporting goods
12 store because they are into guns and whatnot. And Shawn
13 likes spending time with his grandfather and his uncles,
14 but to actually be there looking at guns, he's not
15 interested at all.

16 Q. Okay. So no real interest there. Have you
17 been present in court for the discussion about -- from
18 the witness stand about the Facebook page and the
19 websites and so on?

20 A. Yes.

21 Q. All right. Do you have any opinion on that
22 stuff?

23 A. No, I don't, because I haven't seen them.

24 Q. All right. Would it appear to you that these
25 are exaggerations by your son?

1 A. Yes.

2 Q. Any behavior that you've noticed consistent
3 with such talk assuming, just for sake of discussion,
4 that it were true?

5 A. Not at all. That's -- to me it's -- I've seen
6 postings of other people that I know, and basically
7 shooting their mouth off on their pages is what it ends
8 up being.

9 Q. All right. Would you be okay with Internet
10 restrictions for the boy were he released by Judge
11 Holter?

12 A. Of course.

13 Q. Okay. And you would be willing to report
14 those if those conditions were violated?

15 A. Yes, I would.

16 MR. DONAHOE: I have nothing further,
17 Your Honor.

18 THE COURT: Cross-examination.

19

20 CROSS-EXAMINATION

21 BY MR. WHITAKER:

22 Q. Good morning, ma'am.

23 A. Good morning.

24 Q. Now, you mentioned that Shawn works for you at
25 Hallmark?

1 A. Correct.

2 **Q. How many hours a week does he work there?**

3 A. It depends. During the summer our hours are
4 cut considerably because there aren't any holidays.
5 Right now it's going to start picking up because we are
6 going to start gearing up for the season, which is from
7 Halloween until graduation and Father's Day in June.

8 **Q. So, can you give me an idea, say, during your**
9 **busy season on an average how many hours a week would he**
10 **work.**

11 A. Somewhere between maybe 25 and 30, depending
12 on like -- especially like the week before Christmas and
13 Valentine's Day and Mother's Day when we have to be in
14 the store two and three times a day to keep replenishing
15 the cards.

16 **Q. And during the slow season, like this -- as**
17 **you described, the summertime, how many hours a week**
18 **does he work?**

19 A. Maybe 20, 20-ish. 15, 20.

20 **Q. And what is -- so even at the busy season, the**
21 **busy season maybe the max he's working about 30 hours a**
22 **week?**

23 A. It's hard to say. It depends on what Hallmark
24 sends us for that season how many hours they want us to
25 work.

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1 Q. Okay. But you said maybe around 25 to 30.

2 A. When it's busy between, like I said before,
3 Christmas, and it could be up to 40 hours. Again, it
4 depends on what Hallmark tells us they want us in the
5 store. I have no control over that.

6 Q. Okay. So what does Shawn do in his free time
7 that he's not working? Because he's not working
8 full-time, right?

9 A. Correct.

10 Q. So what does he do in his spare time when he's
11 not working?

12 A. Watches TV, listens to music. He's on his
13 computer, plays games on his computer with his
14 friends.

15 Q. Now, you had talked with Agent Fischer; is
16 that right?

17 A. Correct.

18 Q. And you had mentioned to Agent Fischer that
19 Shawn doesn't have a lot of friends here in Montana; is
20 that right?

21 A. Correct.

22 Q. And that was a concern for you, that he
23 doesn't have a lot of friends, he doesn't have a lot to
24 do here in Montana.

25 A. It was a concern for me that there is not a

1 lot of things available to young men in Shawn's age
2 group outside of going to bars.

3 Q. Does Shawn go to bars?

4 A. No, he does not.

5 Q. So basically, in his free time he just kind of
6 watches TV and plays games on his computer and things
7 like that to kind of keep himself occupied?

8 A. Correct.

9 Q. Okay. Now, you had mentioned that you have
10 been divorced and are remarried?

11 A. Correct.

12 Q. Where does Shawn's real father live?

13 A. I believe he's still in Phoenix, Arizona, but
14 I don't know.

15 Q. Does Shawn have any contact with him?

16 A. To my knowledge, no.

17 Q. Now, I want to turn your attention to the time
18 when Shawn and AS, the victim, showed up at your house,
19 and you said that this young girl was talking about how
20 abusive her home was. Is that correct?

21 A. Correct.

22 Q. And you said that that was a real concern for
23 you.

24 A. Correct.

25 Q. And, in fact, you were -- you said I got to

1 get her immediately out of my house; is that right?

2 A. Correct.

3 Q. And you immediately went to the airport.

4 A. She may have been in my home about 10 to 15
5 minutes before we left.

6 Q. Okay. But it was a really -- it was a concern
7 for you that what she was telling you about, that her
8 father beat her and that she was in this abusive home?

9 A. Correct.

10 Q. And your decision was to take her to the
11 airport and send her back; is that right?

12 A. Correct.

13 Q. Did you have any concern for her safety in
14 sending her back?

15 A. I did, until I found out when I heard -- when
16 I talked to her mother on the phone that the sister was
17 picking her up, that she said she was not going directly
18 home. Her -- one of her older sisters was picking her
19 up at the airport.

20 Q. And did you have any thought to -- if you were
21 concerned for her safety at home and she -- and it was
22 your understanding that she had run away from that, did
23 you have any thought to call the police and let them
24 know about the situation?

25 A. According to her father, a conversation that I

1 heard Shawn and her father had on Shawn's cellphone with
2 the speaker phone on, the father had reported her as a
3 runaway, he had told Shawn she is on her way to you.
4 Shawn said, she is here and we are putting her on the
5 plane right now, and her father said fine.

6 Q. And -- but as far as for you, you testified
7 that you were concerned for her safety in sending her
8 back, and that's why she left, and she came here because
9 she was allegedly being beaten is what she told you.

10 A. Correct.

11 Q. You didn't independently call the police or
12 let any of the authorities know that perhaps you're
13 sending a child back to an abusive home, that perhaps --
14 and you talked to the father, obviously, like you said,
15 but you had no indication or thought to call the police
16 and say I may be sending a child back to an abusive home
17 where she is getting beaten?

18 A. No, I did not. I did not think of that.

19 Q. When you were interviewed by Agent Fischer,
20 you had also indicated that you knew Shawn was engaged
21 in sexual activity with this person that he had gone to
22 pick up from Oregon?

23 A. No, I did not.

24 Q. Did you know that Shawn had gone to Oregon?

25 A. I knew once he had gotten to Oregon. He

1 called me to let me know that he was in Oregon.

2 Q. And do you know why he went to Oregon?

3 A. No, I do not.

4 Q. Why did he tell you he was in Oregon?

5 A. He said he needed to take some time off from
6 work, that he was going to take a trip and he wanted to
7 go to Oregon.

8 Q. And so he called you to let you know that he
9 arrived in Oregon?

10 A. That he was safe.

11 Q. And at any point did you know that he was
12 engaged in any type of sexual activity, whether in
13 Oregon, Washington, or at the Shilo Inn here in
14 Montana?

15 A. No.

16 Q. You had no idea that he was with -- did you
17 know if he was with anybody during that time?

18 A. I did not know.

19 Q. So the very first time you learned that Shawn
20 was with AS, the victim, was when they showed up at your
21 house.

22 A. Correct.

23 Q. So you had no ability to control Shawn or his
24 actions or what he was engaged in in December with AS?

25 A. No. He's an adult. If he was 17 years old I

1 would have, but being 23, no.

2 Q. And you also testified that you have never
3 seen the Facebook page; is that right?

4 A. Correct.

5 Q. And I'm guessing probably for the same reason,
6 because he's an adult and you don't monitor those kind
7 of things now because he's an adult?

8 A. I wouldn't have even -- I didn't even know if
9 he had a Facebook page or not.

10 MR. WHITAKER: Okay. No further
11 questions, Your Honor.

12 THE COURT: Thank you. Redirect.

13 MR. DONAHOE: I have nothing. Thanks,
14 Judge.

15 THE COURT: Step down, please. Call your
16 next witness, please.

17 MR. DONAHOE: I have no other witnesses.
18 Thank you.

19 THE COURT: The Government going to offer
20 any rebuttal?

21 MR. WHITAKER: No rebuttal, Your Honor.

22 THE COURT: Okay. Out of an abundance of
23 caution I'm going to say we've now heard the
24 preliminary examination, and we'll immediately turn
25 to the question of detention. I have received a

1 pretrial services report. Have Counsel had the
2 right to look at it? Have you seen it?

3 MR. DONAHOE: I've not seen it, Your
4 Honor.

5 MR. WHITAKER: I've not seen it either,
6 Your Honor.

7 THE COURT: Would the pretrial services
8 office have a copy to show? I've been supplied a
9 copy.

10 MR. WALLER: I did provide them with
11 copies, Your Honor. I can run down and run a
12 couple extra copies.

13 THE COURT: Would the clerk please hand
14 this to Counsel? Would you hand this to them?

15 MR. WHITAKER: Thank you, Your Honor.

16 THE COURT: Does Government wish to stand
17 on this pretrial services report or do you wish to
18 submit additional evidence in addition to what I've
19 heard already?

20 MR. WHITAKER: I think the Government,
21 through the testimony that's already been provided,
22 has given the Court --

23 THE COURT: You're adopting that for the
24 purposes of the detention hearing, for the
25 detention part of this hearing; is that correct?

1 MR. WHITAKER: Yeah, that's correct.

2 THE COURT: Okay. Mr. Donahoe?

3 MR. DONAHOE: I don't have anything
4 beyond what the Court has heard.

5 THE COURT: Okay. The Court determines
6 that, from the evidence produced, that there is
7 probable cause to believe that Shawn Matthew
8 Russell was in the state of Montana, in the
9 District of Montana, from September 2009 to
10 December 2009, and that the Defendant, using a
11 facility and means of interstate commerce,
12 knowingly persuaded and induced, enticed, and
13 coerced an individual here known simply as -- I
14 wrote the initials down, but the victim, I'm going
15 to call her "the victim," was a person who had not
16 attained the age of 18 years, to engage in sexual
17 activity without the consent of the person at that
18 time, that person being of the age of 16 years.

19 As to Count II, I determine that in
20 December of 2009 in Helena, in the state and
21 district of Montana and elsewhere, including the
22 States of Oregon and Washington, and the Court
23 notices that probably the state of Idaho was
24 involved because of the transportation across the
25 state of Idaho, that the Defendant, Shawn

1 Russell -- Shawn Matthew Russell knowingly
2 transported an individual who had not attained the
3 age of 18 years in interstate and foreign commerce
4 with the intent that that person engaged in sexual
5 activity for which that person could be charged
6 under the Montana Codes, sexual intercourse without
7 consent, and in violation of 18 U.S.C. 2423(a).

8 As to Count III, the Court determines
9 that sufficient evidence exists to establish
10 probable cause that in December 2009, in Helena, in
11 the state of Montana and elsewhere, including
12 Oregon and Washington, the Defendant, Shawn Russell
13 traveled -- Shawn Matthew Russell traveled in
14 interstate commerce for the purpose of engaging in
15 illicit sexual conduct, that is sexual intercourse
16 without consent, in violation of the Montana Codes
17 and the United States Codes, that probable cause
18 attaches to all of these charges.

19 Let me explain to you, Mr. Russell, that
20 probable cause simply means that the Court has
21 determined that sufficient cause exists in the
22 facts to establish a prima facie case against you
23 at this point as the Court views it. This does not
24 mean in any way that you've been found guilty of
25 these offenses, it simply means that probable cause

1 has been established. This matter will be
2 presented, I'm sure, Counsel, to the Grand Jury,
3 and they will make a final determination of
4 probable cause, and if they find probable cause,
5 will issue what is called an indictment charging
6 you with offenses as the Grand Jury determines they
7 exist.

8 As to pretrial detention, first of all,
9 I've now determined that probable cause exists on
10 each of the three counts that you're charged with.
11 Probable cause having been determined, the Court
12 notes that under the Bail Reform Act the offenses
13 with which you're charged trigger the statute and
14 -- under that -- under the Bail Reform Act, you can
15 be detained if the Court determines that you should
16 be, and that I now have determined probable cause.
17 I note that you have made threats. First of all,
18 the charges are such that you would be -- could be
19 held anyway, but your additional threats of harm to
20 yourself or to your community compels the Court to
21 determine that you do pose a danger to the
22 community.

23 Further, in the light of the charges
24 against you, and the fact that I note that you
25 traveled interstate, you do not really have great

1 connections with this community. You work
 2 part-time. You seem to not be employed except at
 3 that part-time. You spend your time essentially
 4 doing nothing. And, in fact, if you can easily
 5 travel, it makes me feel that you are a flight
 6 risk, and that's kind of what this statement that
 7 you made, both on Facebook and otherwise, of being
 8 ready, willing and able to cause harm to other
 9 people, all of this, as I said, compels the feeling
 10 that I must detain you awaiting trial.

11 This matter will be presented to the
 12 Grand Jury, you'll be arraigned on the charges from
 13 the Grand Jury. You will have a copy of those that
 14 will be supplied to you. I cannot set a trial date
 15 until after the Grand Jury has met and determined
 16 what the charges against you might be. As soon as
 17 that happens, you will be arraigned and a Judge
 18 will set a trial.

19 Is there anything further?

20 MR. WHITAKER: Nothing further from the
 21 Government.

22 THE COURT: Okay. We are in recess.

23 THE BAILIFF: All rise.

24

25 (The proceedings concluded at 10:41 a.m.)
